

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

CRL.A.No. 390 of 2011 ()

AGAINST THE ORDER IN M.C.173/2009 IN SC 584/2005 of ADDL. SESSIONS
COURT (ADHOC-III), KASARAGODE DATED 19.12.2009

APPELLANT/2nd RESPONDENT:

DAMODARAN, S/O.AMBU, RESIDING AT
KEKKANCHAL, VAYAKKARA VILLAGE, CHERUPUZHA.

BY ADV. SRI.SREEPRAKASH K.NAIR

RESPONDENTS/STATE:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 28-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.A.No.390 of 2011

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Dated this the 28th day of October, 2015

JUDGMENT

Appellant was one of the surety of the accused in S.C.No.584 of 2005. Appellant along with another surety had executed a bail bond undertaking inter alia to produce the accused on all posting dates and in case of default, to forfeit the bail bond and to pay penalty subject to a maximum of Rs.25,000/-. Subsequently, accused remained absent and MC proceedings were initiated against the sureties. In spite of service of notice to them, they remained absent and hence the court below by the impugned order imposed a penalty of Rs.25,000/- each without granting any remission. This is challenged in this appeal by the 2nd surety.

2. Heard and examined the records.

3. Admittedly, the sureties had executed a bond. They had inter alia undertaken to procure the presence of the accused on all posting dates and in case of default to pay penalty. They did not appear before the court below in spite of the notice served and they did not show any cause as to why the penalty shall not be imposed. Consequently, court below was justified in passing the appropriate order, having regard to the facts and circumstances. However,

learned counsel for the appellant referred to paragraph 3 of the appeal memorandum wherein it has been stated that pursuant to the judgment dated 19.12.2009, the accused was produced before the court below. In the meanwhile, first surety died. In the above circumstances, I feel that a lenient view is liable to be taken. There is nothing on record to show that the sureties willfully refrained from appearing before the court below. Considering these facts, I feel that penalty imposed by the court below is on the higher side and a lenient view can be taken by scaling it down to Rs.10,000/- payable by the surety.

In the result, the appeal is allowed in part. In modification of the impugned order, penalty is reduced to Rs.10,000/- (Rupees ten thousand only) payable by the appellant. Appellant is granted one months' time to remit the amount. Remission is granted regarding the remaining amount. If any amount is deposited pursuant to this order, that will be given credit to.

Sd/-
SUNIL THOMAS
Judge

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True Copy /

P.A to Judge